Nos. 20378, 20447 and 20522

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT



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No. 20378

FEDERAL HOME LOAN BANK BOARD, *et al.*,
*Appellants,*

*vs.*

SIDNEY ELLIOTT, *et al.*,
*Appellees.*

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No. 20447

FEDERAL HOME LOAN BANK BOARD, *et al.*,
*Appellants,*

*vs.*

SIDNEY ELLIOTT, *et al.*,
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No. 20522

FEDERAL HOME LOAN BANK BOARD, *et al.*,
*Appellants,*

*vs.*

EQUITABLE SAVINGS AND LOAN ASSOCIATION, *et al.*,
*Appellees.*

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On Appeal From the United States District Court for the Southern District of California.
(Now Central District of California)

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## Brief for Appellee Equitable Savings & Loan Association.

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## TOPICAL INDEX

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## Brief for Appellee Equitable Savings & Loan Association.

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### Preliminary Statement.

Appellee Equitable Savings and Loan Association (Equitable) having interpleaded the shares in dispute, takes no position on whether said shares should be distributed pro rata as ordered by the District Court, or

in accordance with the restrictive provisions of the Merger Agreement as contended by Appellants.

Equitable urges that *either* the judgments appealed from be affirmed *or* that the shares be ordered distributed in accordance with the Merger Agreement, *but that in no event should the merger be ordered set aside.*

## ARGUMENT.

### The Merger Should Not Be Set Aside.

Appellants urge that if it is determined that the restrictive provisions of the Merger Agreement, which they insisted upon, are invalid, the Court may not order that the stock be distributed pro rata, but must, instead, order that the merger be set aside and that Equitable be divested of the Long Beach assets and liabilities.

It is submitted that it is impossible to now divest Equitable of the Long Beach assets and liabilities and that were such unscrambling possible, it would be improper to order the same in the circumstances of this case.

The clock cannot be turned back more than three years. The present Equitable assets and liabilities cannot be divided into a Long Beach bundle and an Equitable bundle. The inequities which would result from such a division makes the same unthinkable.

If it were possible to set the merger aside, it would not be proper to do so by reason of the non-appealable Consent Order requiring distribution of the stock not in dispute [3 R. 167-179, 180-190, 309-311].

By stipulating to the distributions of the shares not in dispute, Appellants consented to a Court determination of the ownership of shares in dispute and waived any rights they might otherwise have had to require the merger to be set aside.

## Conclusion.

Either the Judgments appealed from should be affirmed, or the shares should be ordered distributed in accordance with the Merger Agreement, but in no event should the merger be ordered set aside.

Respectfully submitted,

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## Certificate.

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those Rules.

STANLEY BELKIN